

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Peter Mac Connell, for Tom Mitchell

Date Application filed with the Town Clerk: September 17, 2004

Nature of request: Petitioners seek to modify existing Special Permit ZBA FY2000-00030, to delete Condition #2, and Special Permit ZBA FY2001-00044 to delete Condition #1, both of which require owner occupancy of the premises.

Location of property: 44 Belchertown Road (Map 15C, Parcel 63, COM Zone)

Legal notice: Published in the Daily Hampshire Gazette on September 29 and October 6, 2004 and sent to abutters on September 29, 2004.

Board members: Zina Tillona, Joan Golowich and Barbara Ford

Submissions:
The applicant submitted a new Management Plan.

Site Visit: October 12, 2004

Board members Zina Tillona, Joan Golowich and Barbara Ford attended the site visit. They were met by Tom Mitchell, the applicant. At the site visit the Board observed the three-story brick building and associated parking area, surrounded by mixed uses, including an automobile service station, a used car sales establishment, residential uses and agricultural fields.

Public Hearing: October 14, 2004.

At the public hearing, Attorney David Kaplan, standing in for Attorney Peter Mac Connell, who could not attend the hearing, presented the petition for Tom Mitchell. He made the following points:

- During the initial permitting process, Mr. Mitchell had offered to live on the site.
- He is probably going to sell the property to an investment group and that is why he is requesting that the condition regarding owner occupancy be deleted.
- Mr. Mitchell has two businesses, this rental property and a local concrete installation business; the property is Mr. Mitchell's most valuable asset; he has an incentive to see that it is maintained and managed well.
- He visits or drives by the site once a day and is always available by cell phone.
- Mr. Mitchell has a tenant, a realtor, who lives on the site and acts as Mr. Mitchell's "eyes and ears" on the property.
- This building has six apartments, but only four are currently occupied.
- Because the building is managed correctly, owner occupancy will not be necessary.

Ms. Tillona noted that she had sat on the panel which granted the previous permit. At that time, there had been a swimming pool, swings and possibly other recreational equipment on the site, which had raised safety and liability concerns with the Board. The owner-occupancy condition was added to limit the safety and liability issues associated with this on-site equipment.

Ms. Tillona also recommended that, if the ZBA were to drop the owner-occupancy condition, the Board should substitute a condition that the permit would expire upon sale of the property. In addition, there should be a provision in the Management Plan that the owner's phone number should be on file with the Building Commissioner's office and the Police Department.

Ms. Ford inquired about the possibility of establishing a resident manager. Mr. Kaplan responded that the realtor/tenant acts as a de facto resident manager.

The Board inquired about who the current occupants are. Mr. Kaplan responded that there are currently 2 businesses, on the first floor and in the basement, and 4 occupied apartments and 2 vacant apartments on the second and third floors.

Joan Golowich MOVED to close the public hearing. Zina Tillona SECONDED the motion. The Board VOTED unanimously to close the public hearing.

Public Meeting:

At the Public Meeting the Board discussed the conditions under which they would grant this Special Permit.

Joan Golowich MOVED to approve the Management Plan, as revised. Barbara Ford SECONDED the motion. The Board VOTED unanimously to approve the Management Plan, as revised.

Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

- 10.380 and 10.381 and 10.385 The proposal is suitably located in the neighborhood, is compatible with existing uses and other uses permitted by right in the same District and reasonably protects the adjoining premises against detrimental or offensive uses on the site, because the neighborhood contains mixed uses, including residential uses, this property has been operating as a mixed use for the past several years and the revised management plan will assure that the property continues to be managed properly.
- 10.382 and 10.383 The proposal will not constitute a nuisance and will not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, because the building has been well managed to date, without nuisance, inconvenience or hazard to abutters, and Mr. Mitchell, who lives and works locally, will continue to maintain and manage the building.
- 10.384 Adequate and appropriate facilities will be provided for the proper operation of the proposed use, because the mixed use of the building has been adequately and appropriately provided for over the past few years and no changes to the facilities or use have been proposed.
- 10.386 The proposal ensures that it is in conformance with the Parking and Sign regulations because the site is currently in compliance with these regulations and there are no proposed changes to parking or signage.
- 10.387 The proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets and property because the site currently functions property with respect to vehicular and pedestrian movement and there are no proposed changes in that regard.

10.398 The proposal is in harmony with the general purpose and intent of this Bylaw because it protects and promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Barbara Ford MOVED to approve the application, with conditions. Joan Golowich SECONDED the motion. The Board VOTED unanimously to approve the application, with conditions.

Zoning Board Decision:

For all of the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions, to Peter Mac Connell, for Tom Mitchell, to modify existing Special Permit ZBA FY2000-00030, to delete Condition #2, and Special Permit ZBA FY2001-00044, to delete Condition #1, both of which require owner occupancy of the premises at 44 Belchertown Road, (Map 15C, Parcel 63, COM Zone).

ZINA TILLONA JOAN GOLOWICH BARBARA FORD

FILED THIS _____ day of _____, 2004 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2004.

NOTICE OF DECISION mailed this _____ day of _____, 2004
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2004,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Peter Mac Connell, for Tom Mitchell, to modify existing Special Permit ZBA FY2000-00030, to delete Condition #2, and Special Permit ZBA FY2001-00044, to delete Condition #1, both of which require owner occupancy of the premises at 44 Belchertown Road, (Map 15C, Parcel 63, COM Zone), with conditions, as follows:

1. The dumpster must be screened by a wooden fence or landscaping.
2. Management of the property shall conform to the Management Plan, *as revised* and approved at the public meeting of October 14, 2004, and on file in the Zoning Office, in the Planning Department.
3. This permit shall expire upon change of ownership or management.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE